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IN THE

**SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1941

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CITY OF INDIANAPOLIS, et al.,

*Petitioners.*

v.

THE CHASE NATIONAL BANK OF THE CITY  
OF NEW YORK, Trustee, etc., et al.,

*Respondents.*

Nos. 10-11

THE CHASE NATIONAL BANK OF THE CITY  
OF NEW YORK, Trustee, etc.,

*Petitioner,*

v.

CITIZENS GAS COMPANY OF INDIANAPOLIS,  
et al.,

*Respondents.*

Nos. 12-13

REQUEST FOR PERMISSION TO FILE SUPPLEMENTAL MEMO-  
RANDUM AND SUPPLEMENTAL MEMORANDUM OF CITI-  
ZENS GAS COMPANY OF INDIANAPOLIS

PAUL Y. DAVIS,

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*Counsel for Citizens Gas  
Company of Indianapolis.*

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Indianapolis, Indiana

*Of Counsel.*

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REQUEST FOR PERMISSION TO FILE SUPPLEMENTAL  
MEMORANDUM

Citizens Gas Company of Indianapolis, respondent, respectfully asks permission of the Court to file the supplemental memorandum attached to this motion, in response

to the Supplemental Memorandum of City of Indianapolis,  
et al., petitioners.

Respectfully submitted,

PAUL Y. DAVIS,

WILLIAM G. SPARKS,

*Counsel for Citizens Gas  
Company of Indianapolis.*

DAVIS, BALTZELL & SPARKS,

Indianapolis, Indiana

*Of Counsel.*

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SUPPLEMENTAL MEMORANDUM OF CITIZENS GAS COMPANY OF  
INDIANAPOLIS, RESPONDENT\*

If, as the City of Indianapolis contends, Citizens Gas Company had no power or authority as Trustee to execute the 99-year lease, Citizens Gas relieved itself of all obligation to Indianapolis Gas Company, the named lessor, and to the mortgage trustee by delivering the possession

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\* This memorandum is intended merely to supplement the brief heretofore filed by this respondent.

of the property to the City on September 9, 1935. Both Indianapolis Gas, as owner, and Chase National Bank, as mortgage trustee, had accepted the payments made by Citizens Gas under the lease as sufficient compensation for the use of the property by Citizens Gas. And, without seeking any agreement from Citizens Gas, Indianapolis Gas acquiesced in the transfer of possession of its property to the City by the written agreement between the City and Indianapolis Gas of March 2, 1936 (I. R. 205-208).

If, as Chase and Indianapolis Gas contend, the 99-year lease, being valid in its inception, is binding and is a charge against the trust property conveyed to the City on September 9, 1935, for the remainder of the term of 99 years, the question of the present liability of Citizens Gas has no practical importance. Since by Section 29 of the 99-year lease the liability of Citizens Gas is limited to the trust assets (I. R. 78), the liability of the City and the liability of Citizens Gas coincide.

And, regardless of the liability or non-liability of the City, the liability of Citizens Gas can never exceed the limitation imposed by Section 29 of the 99-year lease (I. R. 78). Since no one denies that

(1) the Public Charitable Trust is valid,

(2) the City had the right to require the conveyance and transfer of all of the property of Citizens Gas to the City, and Citizens Gas was under the corresponding duty to convey and transfer all of its property to the City, subject to all of the legal obligations of Citizens Gas, and

(3) the conveyance and transfer were made strictly in accordance with such right and duty,

liability cannot now be imposed upon Citizens Gas without altering the plain meaning of the lease contract between the parties. No one has ever suggested that there should be a reconveyance to Citizens Gas, but unless this is ordered and the execution of the admittedly valid Public Charitable Trust completely nullified, there is no legal basis to warrant the imposition of liability upon Citizens Gas.

In other words, if the trust property now in the possession of the City is not subject to the obligation of the 99-year lease, the lease has expired by reason of the fact that Citizens Gas had no authority to contract with reference to any period beyond the term of its own trusteeship. Otherwise Citizens Gas is made liable in violation of Section 29 of the 99-year lease (I R. 78). In such case, Section 32 of the lease (I R. 79-80) comes into play, making the lease binding upon the parties only "for the longest term for which the parties might lawfully contract."

As pointed out in the original brief of Citizens Gas (page 6, paragraph (3)), both Indianapolis Gas and the purchaser of the bonds had full knowledge of the terms and conditions of the Public Charitable Trust (I R. 62; II R. 583-586). The rights of the City and the legal duty of Citizens Gas were congenital in the existence of Citizens Gas.

The City's rejection of the assignment of the 99-year lease was obviously for the purpose of disavowing any purpose to accept the obligations of the lease and to permit the City to contest its validity. The formal rejection could have no other legal effect because the statute directing the conveyance to the City and authorizing the City to accept the conveyance provided as follows:

"Whenever any instrument of transfer or conveyance shall be executed, transferring or conveying the property, either real or personal, of any such corporation to such town or city the title to such property shall vest in such town or city, subject to all outstanding legal obligations of said corporation."

*Chapter 78, Acts Indiana General Assembly 1929, Section 1. (Burns' Indiana Statutes Annotated, 1933, Section 48-7218.)*

Thus it is made clear again that there can be no possibility of imposing liability upon Citizens Gas separate and apart from the property conveyed and transferred to the City on September 9, 1935. This property is subject to all legal obligations of Citizens Gas presently existing under the 99-year lease.

As stated above, this memorandum is intended merely to supplement the original brief of Citizens Gas.

Respectfully submitted,

PAUL Y. DAVIS,

WILLIAM G. SPARKS,

*Counsel for Respondent  
Citizens Gas Company of  
Indianapolis.*